ARTICLE 5. INDIANA EMPLOYMENT AND TRAINING SERVICES ACT; ADMINISTRATION

Rule 1. Definitions

646 IAC 5-1-1 Applicability

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1; IC 22-4.5

Sec. 1. (a) The definitions in this rule apply throughout this article.

(b) The definitions in IC 22-4, IC 22-4.1, and IC 22-4.5 apply throughout this article unless otherwise specifically defined in this article. *(Department of Workforce Development; 646 IAC 5-1-1; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)*

646 IAC 5-1-2 "American vessel" defined

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 2. "American vessel" means any vessel:

(1) documented or numbered under the laws of the United States; or

(2) that is neither documented or numbered under the laws of the United States nor documented under the laws of any foreign country, if its crew is employed solely by one (1) or more citizens or residents of the United States, or corporations organized under the laws of the United States or any state.

(Department of Workforce Development; 646 IAC 5-1-2; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)

646 IAC 5-1-3 "Approved training" defined

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 3. (a) "Approved training" means training when the claimant is enrolled in:

(1) Workforce Innovation and Opportunity Act (WIOA) services; or

(2) training approved by the department.

(b) Training may be approved regardless of whether it is funded by the department or by the claimant. *(Department of Workforce Development; 646 IAC 5-1-3; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA; filed Feb 25, 2019, 2:18 p.m.: 20190327-IR-646180408FRA, eff Mar 30, 2019)*

646 IAC 5-1-4 "Employee" defined

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4-8; IC 22-4.1

Sec. 4. "Employee" means any individual performing personal services that constitute employment under IC 22-4-8, for remuneration. *(Department of Workforce Development; 646 IAC 5-1-4; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA; filed Feb 25, 2019, 2:18 p.m.: 20190327-IR-646180408FRA, eff Mar 30, 2019)*

646 IAC 5-1-5 "Full time" defined

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 5. "Full time" means that number of hours that are customarily considered full time prevailing in a particular industry. *(Department of Workforce Development; 646 IAC 5-1-5; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted*

filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)

646 IAC 5-1-6 "Governmental entity" defined

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 6. "Governmental entity" means an instrumentality of:
(1) the state; or
(2) one (1) or more political subdivisions of the state.
(Department of Workforce Development; 646 IAC 5-1-6; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)

646 IAC 5-1-7 "Instructional" defined

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 7. "Instructional" means services that consist of:
(1) teaching, tutoring, or lecturing;
(2) directing or supervising the instructional activities of others; or
(3) counseling, advising, or otherwise determining curriculum, courses, and academic pursuits for students.
(Department of Workforce Development; 646 IAC 5-1-7; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)

646 IAC 5-1-8 "Instrumentality" defined

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 8. "Instrumentality" means a legal entity organized to carry on some function of government for the state or a political subdivision, and is an independent legal entity with the power to hire, supervise, and discharge its employees. Generally, an instrumentality may sue and be sued, enter into a contract, and hold or transfer property in its own name. *(Department of Workforce Development; 646 IAC 5-1-8; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)*

646 IAC 5-1-9 "Job-attached" defined

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 9. "Job-attached" means a relationship between an employer and an employee in which the employee is not actively performing services for the employer, but is still connected to the employer through the payment of remuneration in the form of supplemental unemployment insurance benefits, or by remaining covered under the employer's health benefits plan. *(Department of Workforce Development; 646 IAC 5-1-9; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)*

646 IAC 5-1-10 "Officer or member of the crew" defined

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 10. "Officer or member of the crew" means the master or officer in charge of the vessel, however designated, and every individual subject to the authority of the master or officer in charge serving on board and contributing in any way to the operation and welfare of the vessel. *(Department of Workforce Development; 646 IAC 5-1-10; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-*

646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)

646 IAC 5-1-11 "Part-time worker" defined

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 11. "Part-time worker" means an individual who:
(1) works fewer than the customarily scheduled full-time hours of an employer; and
(2) has assented through agreement, policy, or practice to work the fewer than full-time hours.
(Department of Workforce Development; 646 IAC 5-1-11; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)

646 IAC 5-1-12 "Political subdivision" defined

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 12. (a) "Political subdivision" means a:
(1) county;
(2) city;
(3) town;
(4) village:
(5) school; or,
(6) sanitation, utility, reclamation, improvement, drainage, irrigation, flood control, or similar district.
(b) Organizations such as libraries and hospitals may be integral parts of cities, counties, or other political subdivisions. If so, coverage of the organization would depend upon the coverage of the political subdivision of which the organization is a part. The organization may be a political subdivision itself, or it may be a private nonprofit organization. *(Department of Workforce Development; 646 IAC 5-1-12; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)*

646 IAC 5-1-13 "Principal administrative" defined

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 13. "Principal administrative" means all executive, managerial, or administrative services performed for an educational institution. *(Department of Workforce Development; 646 IAC 5-1-13; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)*

646 IAC 5-1-14 "Professional employer organization" or "PEO" defined *(Voided)*

Sec. 14. *(Voided by P.L.33-2013, SECTION 7, effective July 1, 2013.)*

646 IAC 5-1-15 "Remuneration" defined

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4-4-1; IC 22-4.1

Sec. 15. "Remuneration" has the same meaning set forth in IC 22-4-4-1; however, the term specifically includes payments of supplemental unemployment insurance benefits and payments by an employer for an employee's health insurance benefit plan. *(Department of Workforce Development; 646 IAC 5-1-15; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)*

646 IAC 5-1-16 "Research" defined

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 16. "Research" means any study or investigation in a field of science or knowledge. *(Department of Workforce Development; 646 IAC 5-1-16; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)*

646 IAC 5-1-17 "Sick pay" defined

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 17. "Sick pay" means payment made to an employee during periods of temporary absence due to illness or injury, if the employer anticipates that the employee will return to service. *(Department of Workforce Development; 646 IAC 5-1-17; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA; filed Feb 25, 2019, 2:18 p.m.: 20190327-IR-646180408FRA, eff Mar 30, 2019)*

646 IAC 5-1-18 "Vessel" defined

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 18. In maritime service, "vessel" means watercraft or other contrivances used as a means of transportation on water. The term includes dredges used for navigation and transportation in deepening and removing obstructions from channels, rivers, or other waterways. *(Department of Workforce Development; 646 IAC 5-1-18; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)*

Rule 2. Employer Rights, Responsibilities, and Liability

646 IAC 5-2-1 Quarterly wage and employment reports and contributions

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 1. (a) Every employer subject to IC 22-4 shall report the following information to the department in the form and manner prescribed by the department:

(1) Federal employer identification number assigned to the employer by the Internal Revenue Service.
(2) Total gross wages paid to all employees.
(3) Total remuneration paid for covered employment.
(4) Total wages subject to contribution.
(5) Total number of employees on the payroll.
(6) For every employee, the following:
  (A) Full first name.
  (B) Full last name.
  (C) Social Security number or individual taxpayer identification number.
  (D) Gross wages paid.
  (E) Start date.
  (F) Zip code of the physical work site location.
  (G) Whether the employee is classified by the employer as full-time or part-time, or whether the employee is designated as a seasonal worker pursuant to a decision issued by the department.
  (H) Whether the employee worked for the employer during the week containing the twelfth day of the month for each month in the quarter.

(I) Standard Occupational Classification code applicable to the employee as prescribed by the United States Department of Labor Bureau of Labor Statistics.

This wage and employment report is due on or before the last day of the month next following the quarter for which the report is filed. Contributions are due and payable on or before the last day of the month next following the quarter for which the wage and employment report was filed, except for those employers that have elected to become liable for payments in lieu of contributions.

(b) The quarterly wage and employment reports and contributions from an employer are required for the entire calendar year in which the employer first becomes subject to IC 22-4.

(c) If the due date for a quarterly wage and employment report falls on a Sunday, or a federal holiday, then that due date shall roll over to the next department business day. In all other situations, the due date is the final date indicated on the report for a timely submission. *(Department of Workforce Development; 646 IAC 5-2-1; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA; filed Feb 25, 2019, 2:18 p.m.: 20190327-IR-646180408FRA, eff Mar 30, 2019)*

646 IAC 5-2-2 Filing of reports

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 2. (a) Each employer shall ascertain the Social Security number (SSN) or individual taxpayer identification number (ITIN) of each employee and include the employee's name and SSN or ITIN in any report filed with the department for which the department requires any employee's SSN or ITIN.

(b) All reports shall be filed on the forms required by the department.

(c) Reports shall be filed electronically if required by the department.

(d) Any report that is incomplete or contains inaccurate information may be rejected by the department and shall not be considered submitted until such completions and inaccuracies are corrected by the employer. *(Department of Workforce Development; 646 IAC 5-2-2; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA; filed Feb 25, 2019, 2:18 p.m.: 20190327-IR-646180408FRA, eff Mar 30, 2019)*

646 IAC 5-2-3 Quarterly wage and employment reports; nothing to report; errors

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 3. (a) If an employer has incurred no payroll, and no contributions are due for a particular quarter, the employer's quarterly wage and employment report may be marked "Nothing to Report" in the form and manner required by the department in lieu of completing the report with zeros. Quarterly wage and employment reports must be sent to the department on a quarterly basis until the department terminates or inactivates the employer's account.

(b) If an employer owes additional contributions as a result of a correction, the employer must remit all additional contributions due.

(c) If the employer has paid more contributions than owed, according to the corrected quarterly wage and employment report, the employer's account will show a credit balance. If the credit balance is greater than the amount due on the subsequent quarterly wage and employment report, the employer may file a claim for refund in the form and manner prescribed by the department.

(d) A claim for refund must be executed by the person to whom the claim is alleged to be due. A claim for refund by a corporation must be made in the name of the corporation, and executed by an officer thereof. A fiduciary will be required to furnish a certified copy of appointment to accompany a claim for refund on contributions not paid in fiduciary capacity. *(Department of Workforce Development; 646 IAC 5-2-3; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA; filed Feb 25, 2019, 2:18 p.m.: 20190327-IR-646180408FRA, eff Mar 30, 2019)*

646 IAC 5-2-4 Estimation of wages

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4-11-4; IC 22-4.1

Sec. 4. (a) Pursuant to the department's authority set forth in IC 22-4-11-4, if an employer fails to timely submit quarterly wage and employment reports, the department shall determine whether to estimate employer contributions. The following circumstances relate to a contribution estimation by the department:

(1) An employer's contact with other state agencies regarding unemployment issues does not constitute the submission of quarterly wage and employment reports required by the department.

(2) An employer's failure to claim certified mail notices sent by the department does not constitute a lack of notice to the employer.

(b) Once the department has determined that there is sufficient reason to begin the estimation process, the department shall send the employer a penalty letter. The penalty letter shall:

(1) state the quarter and year of the missing quarterly wage and employment report; and

(2) inform the employer that it has ten (10) days to produce the quarterly wage and employment reports or the department will estimate the data.

If the employer does not submit the quarterly wage and employment reports in question, the department shall estimate the employer contributions, penalties, and interest for the covered quarters. A penalty of twenty-five dollars ($25) for failure to file any required quarterly wage and employment report within ten (10) days of the department's written request shall be applied.

(c) After the department has done a contribution estimation and liability assessment, the department shall send the employer an original assessment for payment. The original assessment sets forth the quarter or quarters and year or years in question, and the contributions, surcharge, penalties, and interest due to the department. The employer has fifteen (15) days from the date the original assessment was sent by the department within which to file a timely protest. *(Department of Workforce Development; 646 IAC 5-2-4; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA; filed Feb 25, 2019, 2:18 p.m.: 20190327-IR-646180408FRA, eff Mar 30, 2019)*

646 IAC 5-2-5 Unemployment contribution rates

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4-11-2; IC 22-4.1

Sec. 5. (a) An employer shall be subject to the penalty rate, as established under IC 22-4-11-2, if as follows:

(1) The employer fails to file any required quarterly wage and employment report.

(2) The employer fails to pay the contributions, surcharge, penalties, and interest charges owed for past quarters, or owed by a predecessor account, within ten (10) days of the date specified on the merit rate delinquency notice, which is sent by the department. The merit rate delinquency notice is not a protestable notification.

(b) Employers that no longer hold new employer status, and are not subject to the penalty rate, qualify for an experience-based merit rate. An employer's merit rate contribution is based upon the following:

(1) The employer's experience account status as of the June 30 computation date.

(2) The employer's payroll in the thirty-six (36) months immediately preceding the computation date.

(Department of Workforce Development; 646 IAC 5-2-5; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA; filed Feb 25, 2019, 2:18 p.m.: 20190327-IR-646180408FRA, eff Mar 30, 2019)

646 IAC 5-2-6 Merit rate process

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 6. (a) Merit rate calculations begin with the allocation of the pool account to employers. Employers are notified of the mutualized benefit charges on the annual merit rate notice. Mutualized benefit charges are nonprotestable.

(b) Any employer with outstanding liabilities, missing quarterly wage and employment reports, or outstanding predecessor liabilities is sent a nonprotestable merit rate delinquency notice. This notification provides the employer an opportunity to avoid being assigned a penalty rate for the next calendar year by making the payments due, or by submitting the missing reports, within ten (10) days of the date the notice was sent by the department.

(c) A merit rate notice is sent to each employer no later than March 30 of the rate year. This notice provides the employer with:

(1) its experience balance;
(2) its prior three (3) fiscal years of taxable payroll;
(3) a voluntary payment offer if eligible; and
(4) any requirements that have not been met.

An employer who has not met the listed requirements, or whose account is at the lowest available rate, is not eligible for a voluntary buy down. An employer has the right to protest its merit rate notice. The protest must be filed within fifteen (15) days of the date the notice was sent by the department. The protest right is limited to whether the employer's contribution rate was calculated correctly and does not extend to department determinations that were independently protestable when issued. *(Department of Workforce Development; 646 IAC 5-2-6; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA; filed Feb 25, 2019, 2:18 p.m.: 20190327-IR-646180408FRA, eff Mar 30, 2019)*

646 IAC 5-2-7 Transfers of Indiana operations

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 7. (a) An employing unit, whether or not an employer at the time of transfer, that:
(1) acquires all or a portion of an employer's trade or business (including the employer's workforce), which results in the continuance of an organization, trade, or business; or
(2) merges, incorporates, or reorganizes the employing unit's business;

immediately qualifies as a covered employer under IC 22-4 and assumes the position of the predecessor with respect to all the resources and liabilities of the predecessor's experience account. The successor/acquirer must complete all reports via Employer Self Service or the current state form approved for such reporting. The predecessor/disposer must complete all reports via Employer Self Service or the current state form approved for such reporting. These reports must be filed by the earlier of thirty (30) days from the dispositions date or ten (10) days from a request for information by the department.

(b) An employing unit, whether or not an employer at the time of transfer, that:
(1) acquires a distinct and segregable portion of an organization, trade, or business; and
(2) retains assets, which may include the workforce or employees, or both, of that business;

shall be entitled to consider the wages reported by the predecessor/disposer when computing the tax base per employee, per calendar year. The predecessor/disposer must transfer a proportionate portion of its experience balance, and the merit rate, to the successor/acquirer. This must be done by the earlier of thirty (30) days from the date of disposition or not later than ten (10) days after notification from the department. The employers must complete all reports in the manner and form prescribed by the department. Failure to complete the required forms shall result in the department making an independent determination with regard to the percentage of the transfer of the disposer's experience balance to the acquirer's experience balance. *(Department of Workforce Development; 646 IAC 5-2-7; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA; filed Feb 25, 2019, 2:18 p.m.: 20190327-IR-646180408FRA, eff Mar 30, 2019)*

646 IAC 5-2-8 Calculation and payment of contributions; municipal utilities

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4-11-2; IC 22-4.1

Sec. 8. (a) If a city or town had previously been a covered employer to the extent of its municipal utilities, the utilities will pay contributions at their computed rate, but the rate will not exceed the prescribed rate under IC 22-4-11-2(c).

(b) If, by statute, a municipal utility is set apart as a separate political subdivision, such utility will retain its experience account and assigned rate, and IC 22-4-11-2(d) will apply to the new account assigned to the city or town for the purpose of reporting nonutility employment. *(Department of Workforce Development; 646 IAC 5-2-8; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA; filed Feb 25, 2019, 2:18 p.m.: 20190327-IR-646180408FRA, eff Mar 30, 2019)*

646 IAC 5-2-9 Accelerated payment of contributions under Schedule "A"

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4-10-1; IC 22-4-29-1; IC 22-4.1

Sec. 9. (a) The department may accelerate contribution payments under IC 22-4-10-1(a). When the department determines that contribution payments should be accelerated under the conditions set forth by statute, each subject employer will be notified not fewer than thirty (30) days prior to the date the accelerated contribution is due.

(b) The employer:

(1) will estimate the amount of the accelerated contribution payment based upon its projection of its estimated payroll for the accelerated quarter; and

(2) must remit that amount in whole or in a percentage of the whole as determined by the department.

(c) Any amount of the estimated accelerated payment that exceeds the amount of contribution actually owed by the employer for the quarter to which the acceleration applies will be applied as a credit against that employer's future liability.

(d) If the amount of the estimated accelerated contribution remitted is less than the contribution actually owed by the employer for the accelerated quarter, the difference between the estimated contribution paid and the actual contribution owed must be paid at the time the contribution would normally be due for the accelerated quarter.

(e) All enforcement procedures that apply to regular contributions, including the interest and penalty provisions of IC 22-4-29-1, will apply to accelerated contributions. *(Department of Workforce Development; 646 IAC 5-2-9; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA; filed Feb 25, 2019, 2:18 p.m.: 20190327-IR-646180408FRA, eff Mar 30, 2019)*

646 IAC 5-2-10 Reimbursable employers; payments in lieu of contributions

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4-10-1; IC 22-4.1

Sec. 10. Any employer that makes an election to reimburse benefit charges under IC 22-4-10-1 will continue to be liable for payments in lieu of contributions until it files a written request to terminate its election. If the department approves the election, the employer will continue to be liable for payments of benefits that applied to an employee's base period falling in quarters in which the employer's election to reimburse was in effect. *(Department of Workforce Development; 646 IAC 5-2-10; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)*

646 IAC 5-2-11 Termination or transfer of business; notice; final report; attachment of successor's assets

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 11. (a) Where the status of an employer is changed by cessation or disposition of a business or an appointment of a receiver, trustee, trustee in bankruptcy, or other fiduciary, the employer shall immediately notify the department in the manner and on the form prescribed by the department, and contributions with respect to wages for employment up to and including the date of the change of status, and with respect to amounts that would otherwise constitute wages as defined in IC 22-4, except for nonpayment thereof, are immediately due and payable. The employer shall immediately file necessary quarterly wage and employment reports, showing all remuneration paid per employee for employment occurring in the calendar quarter in which the change of status occurred, and all previous unreported contributions and remuneration. Quarterly wage and employment reports covering the calendar quarter in which the change of status occurred shall be marked "final report".

(b) Whenever an employer disposes of its organization, trade, or business, in whole or in part, it shall be the duty of both the employer and its successor to notify the department of the disposition on the forms prescribed by the department. If the disposing employer is a corporation, the employer shall follow the dissolution procedure described in IC 22-4-32-23. *(Department of Workforce Development; 646 IAC 5-2-11; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA; filed Feb 25, 2019, 2:18 p.m.: 20190327-IR-646180408FRA, eff Mar 30, 2019)*

646 IAC 5-2-12 Eligibility for separate employer account

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4-10-4; IC 22-4.1

Sec. 12. (a) For purposes of IC 22-4-10-4, any employing unit that is wholly or partially owned by another employing unit will not be eligible for a separate experience account if:

(1) the employing units are so closely related that it would be appropriate to disregard the corporate structure under Indiana law; or

(2) one (1) of the employing units has failed to assume all of the requisite employment responsibilities necessary to provide its employees with employment.

(b) Employing units not eligible for separate accounts are responsible for ensuring that their wages are reported under a single account. *(Department of Workforce Development; 646 IAC 5-2-12; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)*

646 IAC 5-2-13 Responsibilities of related entities

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 13. (a) Where employing units are related because one (1) employing unit has created or acquired a separate employing unit with no existing experience account, the employing units are responsible for determining whether they are eligible for separate accounts before requesting a new account.

(b) Where employing units with properly acquired experience accounts become related and ineligible for separate accounts through acquisition or merger, the entities are responsible for reporting the acquisition or merger to the department. The department shall combine the experience balance of the two (2) accounts once it receives the report. *(Department of Workforce Development; 646 IAC 5-2-13; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)*

646 IAC 5-2-14 Rate recalculation and penalties

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 14. If employing units that are not eligible for separate accounts obtain and use separate accounts, the department shall, once the error has been discovered, retroactively recalculate the employing units' experience rate as if the employing units had reported using a single account. The recalculation must be made not later than four (4) completed calendar years subsequent to the date that the contributions, penalties, or interest would have become due, except that this limitation shall not apply to any contributions, penalty, or interest that should have been paid with respect to any incorrect report filed with the department which report was known or should have been known to be incorrect by the employing unit. In addition, the employing units may be subject to the following penalties:

(1) Penalties and interest as set forth in IC 22-4-29-1.

(2) An increased merit rate under IC 22-4-11-2.

(3) Criminal penalties set forth in IC 22-4-34-2.

(Department of Workforce Development; 646 IAC 5-2-14; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)

646 IAC 5-2-15 Department notices to employers

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4-19-13; IC 22-4.1

Sec. 15. (a) All notices to employers from the department shall be sent to one (1) of the following:

(1) An address designated by the employer. The designation must be entered into the Employer Self Service (ESS) application

by an employee of the employer with the authority to designate a correspondence agent.

(2) The employer's designated agent or representative, if the employer elects to be represented by an agent or representative, and has properly entered the designation in the ESS application.

(3) The employer's ESS account.

The department may make all notices available electronically.

(b) Under IC 22-4-19-13 the department may send the notices set forth in this section solely through electronic means unless the employer elects to receive notices solely through the United States mail on the form and in the manner prescribed by the department.

(c) Each employer shall provide to the department current, accurate contact information, including, but not limited to:

(1) mailing address for service of registered mail; and

(2) e-mail address.

(d) Each employer shall notify the department within fifteen (15) days of a change of mailing address or e-mail address. *(Department of Workforce Development; 646 IAC 5-2-15; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA; filed Feb 25, 2019, 2:18 p.m.: 20190327-IR-646180408FRA, eff Mar 30, 2019)*

646 IAC 5-2-16 Posted notification

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 16. All employers liable for the payment of unemployment contributions must prominently display a poster, or posters, regarding unemployment insurance. Upon request, an employer must provide to employees information necessary for them to obtain their full rights and benefits under IC 22-4. *(Department of Workforce Development; 646 IAC 5-2-16; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)*

646 IAC 5-2-17 Payments to the department

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 17. All payments made or due to the department must be made in the manner prescribed by the department. The department may require all payments to be made electronically. *(Department of Workforce Development; 646 IAC 5-2-17; filed Feb 25, 2019, 2:18 p.m.: 20190327-IR-646180408FRA, eff Mar 30, 2019)*

Rule 3. Seasonal Employers and Employment

646 IAC 5-3-1 Seasonal employer status

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4-7-3; IC 22-4.1

Sec. 1. (a) For an employer to be designated as a seasonal employer under IC 22-4-7-3, the employer must submit an application to the department on the prescribed forms, attesting to the seasonal nature of the business or a portion of the business.

(b) Once an application for seasonal status filed under IC 22-4-7-3 has been approved by the department, the effective date is the first day of the calendar quarter beginning after the date of the seasonal determination. *(Department of Workforce Development; 646 IAC 5-3-1; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)*

646 IAC 5-3-2 Seasonal employment, worker definitions; report requirements

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4-8-4; IC 22-4.1

Sec. 2. (a) Seasonal employment means service performed for an approved seasonal employer during the approved seasonal period of less than twenty-six (26) weeks.

(b) A seasonal worker is an individual employed by an approved seasonal employer who is employed for less than twenty-six (26) weeks in approved seasonal employment.

(c) An approved seasonal employer will be required to submit information on department forms detailing the number of positions classified as seasonal within the approved portion or portions of such business. Also included will be the opening and closing dates of each seasonal operation. *(Department of Workforce Development; 646 IAC 5-3-2; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)*

646 IAC 5-3-3 Seasonal employment determination appeal

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4-32; IC 22-4.1

Sec. 3. Any interested party may file an appeal to a determination regarding an approval or disapproval of an election to become a seasonal employer. The appeal must be filed within fifteen (15) days after the determination to obtain review in accordance with IC 22-4-32. *(Department of Workforce Development; 646 IAC 5-3-3; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)*

646 IAC 5-3-4 Loss of seasonal status

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 4. A seasonal employer shall give written notice to the department when the seasonal operation exceeds twenty-five (25) weeks in a calendar year, within thirty (30) days after completion of the twenty-sixth week of operation. The seasonal employer shall automatically lose its seasonal status for that portion of its operation at the end of the calendar quarter, and wages paid to individuals in that portion of the employer's operation will be useable as regular wages to establish claims. *(Department of Workforce Development; 646 IAC 5-3-4; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)*

646 IAC 5-3-5 Reinstatement of seasonal status

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 5. An employer that loses seasonal status may apply for reinstatement in any calendar year after the year in which its designation as a seasonal employer was revoked. *(Department of Workforce Development; 646 IAC 5-3-5; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)*

646 IAC 5-3-6 Notification to seasonal employees of employment limitations

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 6. (a) An approved seasonal employer must notify a seasonal employee in writing of the following:

(1) The employee has been hired for a specific temporary seasonal period as determined by the department.

(2) The employee is performing services in seasonal employment for an approved seasonal employer.

(3) Employment will customarily be limited to the beginning and ending dates of the seasonal period as determined and approved by the department.

(b) An employee will be considered notified at the date of hiring if the employee is notified on or before the date on which the employee begins services for the employer in any season for which seasonal status has been granted to a seasonal employer. *(Department of Workforce Development; 646 IAC 5-3-6; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)*

646 IAC 5-3-7 Seasonal employment benefit payments

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 7. (a) Benefits may be paid to individuals in seasonal employment on the basis of services performed in seasonal employment only if the claim is filed within the operating period of the approved seasonal employment.

(b) If the claim is filed outside the operating period, benefits may be paid on the basis of nonseasonal wages only. *(Department of Workforce Development; 646 IAC 5-3-7; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)*

646 IAC 5-3-8 Seasonal employment wage reporting

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 8. Seasonal employers shall comply with all reporting requirements as set forth by the department. *(Department of Workforce Development; 646 IAC 5-3-8; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA; filed Feb 25, 2019, 2:18 p.m.: 20190327-IR-646180408FRA, eff Mar 30, 2019)*

Rule 4. Professional Employer Organizations *(Voided)*

NOTE: Voided by P.L.33-2013, SECTION 7, effective July 1, 2013.

Rule 5. Specific Types of Employment; Exempt Employers; Services Excluded from Employment

646 IAC 5-5-1 Trustees

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 1. Individuals hired by a trustee to perform services in connection with the trust property, and who are paid from the funds of the trust, are considered in the employment of the trust, and not the trustee. *(Department of Workforce Development; 646 IAC 5-5-1; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)*

646 IAC 5-5-2 Bankruptcy trustees

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 2. A bankruptcy trustee may be an employing unit or an employer, but remuneration paid to the individual for services rendered as a trustee in bankruptcy is not considered wages, because such trustee is not in employment. *(Department of Workforce Development; 646 IAC 5-5-2; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)*

646 IAC 5-5-3 Caddies

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 3. A caddy who performs services for a member or guest of a golf club is not an employee of the club, although the caddy's fees are paid directly or indirectly by the club. *(Department of Workforce Development; 646 IAC 5-5-3; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)*

646 IAC 5-5-4 Minor child or spouse employed in family business

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 4. (a) A minor child who performs services for a partnership or corporation controlled by the parents of such minor child is considered to be employed by the partnership or corporation, and not by the minor child's parent or parents, but such employment is excluded if the firm is a partnership and the parents of the minor child are the sole owners and members of the partnership.

(b) Services performed for an employing unit by a minor child or spouse of the owner do not constitute employment, but if the employing unit is a partnership, an exempt relationship must exist with each member before such services shall be deemed as excluded services. *(Department of Workforce Development; 646 IAC 5-5-4; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA; filed Feb 25, 2019, 2:18 p.m.: 20190327-IR-646180408FRA, eff Mar 30, 2019)*

646 IAC 5-5-5 Churches and religious organizations

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4-8-2; IC 22-4.1

Sec. 5. (a) As used in this rule, "church", "convention", and "association" have the meanings set forth in IC 22-4-8-2(j)(3)(A).

(b) Service performed for a college devoted primarily to the preparation of students for the ministry is not employment, as is the service for a novitiate or a house of study training candidates to become members of a religious order.

(c) A church-related charitable organization, such as an orphanage or home for the aged, is not considered to be operated primarily for religious purposes, and service performed for such an entity is employment.

(d) Under IC 22-4-8-2(j)(3)(B), the exclusion of service performed by ministers in the exercise of their ministry, and by members of a religious order in performing the duties required by the order, applies only when the service is performed for nonprofit organizations required to be covered by the state law.

(e) A minister is ordained, commissioned, or licensed if he or she has been vested with ministerial status in accordance with the procedure followed by the particular church denomination. However, he or she does not have to be connected with a congregation. Ministerial authority continues until revoked by the church.

(f) For purposes of this section, "exercise of the ministry" includes the following:

(1) The conduct of religious worship and the ministration of sacerdotal functions.

(2) Service performed in the control, conduct, and maintenance of:

(A) a religious organization under the authority of a religious body constituting a church or church denomination; or

(B) an organization operated as an integral agency of such a religious organization or of a church or church denomination.

(3) Service performed for any organization under an assignment or designation by a church, not including cases in which a church merely helps a minister by recommending him or her for a position involving nonministerial services for an organization not connected with the church.

(4) Missionary service or administrative work in the employ of a missionary organization.

(g) As established in subsection (f), service of an individual as a chaplain in an orphanage or in a home for the aged is not employment since the service is in the exercise of the individual's ministry.

(h) Service of an individual who is a member of a teaching or nursing order who is engaged in teaching or nursing is not employment, if the order requires the performance of such service.

(i) Control, conduct, and maintenance of an organization is the performance of services directing, managing, or promoting the activities of the organization. *(Department of Workforce Development; 646 IAC 5-5-5; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)*

646 IAC 5-5-6 Domestic service

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 6. (a) Domestic services excluded from employment are services of a household nature performed by an individual in or about the private home of the person for whom the services are performed, or are services performed in or about the club rooms or house of a local college club, or local chapter of a college fraternity or sorority, for whom the services are performed.

(b) As used in this section, "private home" means the fixed place of abode of an individual or a family.

(c) As used in this section, "local college club or local chapter of a college fraternity or sorority" does not include an alumni club or chapter.

(d) If the home is utilized primarily for the purpose of supplying board or lodging to the public as a business enterprise, the home ceases to be a private home and the services performed therein are not excluded. In addition, if the club rooms or house of a local college club, or local chapter of a college fraternity or sorority, are used primarily for such purposes, the services performed therein are not excluded.

(e) The services described in subsection (a) are not excluded if they are performed in or about:

(1) rooming or lodging houses;

(2) boarding houses;

(3) clubs (except local college clubs);

(4) hotels; or

(5) commercial offices or establishments.

(f) Services performed as a private secretary, even though performed in the employer's home, are not excluded. *(Department of Workforce Development; 646 IAC 5-5-6; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)*

646 IAC 5-5-7 Agricultural labor

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4-7-2; IC 22-4.1

Sec. 7. (a) Agricultural labor does not include services performed in connection with forestry, lumbering, or landscaping.

(b) Greenhouses and other similar structures used primarily for other purposes, such as display, storage, or fabrication of wreaths, corsages, and bouquets, do not constitute farms.

(c) Services performed for the owner or tenant or operator of one (1) or more farms in connection with the:

(1) operation;

(2) management;

(3) conservation;

(4) improvement; or

(5) maintenance;

of any of the farms or its tools or equipment are excluded as agricultural labor, provided the major part of the services is performed on a farm.

(d) Excluded services do not include services performed in connection with commercial canning or commercial freezing or in connection with any commodity after its delivery to a terminal market for distribution for consumption. Moreover, since the excluded services must be rendered in the actual handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivery to storage or to market, or to a carrier for transportation to market, of the commodity, the services do not include services performed as stenographers, bookkeepers, clerks, and other office employees, even though the services may be in connection with such activities, except to the extent that the services of the individuals are performed in the employ of the owner or tenant or other operator of a farm and are rendered in major part on a farm.

(e) Subsequent to December 31, 1977, the exclusion of agricultural labor does not apply to those employers meeting the requirements of IC 22-4-7-2(e). *(Department of Workforce Development; 646 IAC 5-5-7; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)*

646 IAC 5-5-8 Product demonstrators

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 8. (a) Demonstrators:

(1) who are placed by a manufacturer in department and specialty stores to aid in the sale of the specialized products of the manufacturer;

(2) who are engaged by the manufacturer;

(3) who are paid directly or indirectly by the manufacturer; and

(4) who work under the direction of the manufacturer, although this direction may be delegated to the retailer;

are employed by the manufacturer.

(b) If the retailer, not acting as an agent for the manufacturer, engages the demonstrator, and the demonstrator works under the direction of the retailer and receives remuneration directly from the retailer, the retailer is the employer.

(c) If wages are paid in part by the manufacturer and in part by the retailer, the demonstrator is employed by both the manufacturer and the retailer. Each is required to pay contributions on the part of the remuneration that they pay, provided that one (1) or both are employers under IC 22-4. *(Department of Workforce Development; 646 IAC 5-5-8; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)*

646 IAC 5-5-9 Railroad workers

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 9. Services performed where potential unemployment benefits are payable under the Railroad Unemployment Insurance Act shall not be deemed employment within the meaning of IC 22-4. *(Department of Workforce Development; 646 IAC 5-5-9; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)*

646 IAC 5-5-10 Insurance agents and solicitors

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 10. Services performed by an individual as an insurance agent or insurance solicitor are excluded, provided that these services are performed solely on a commission basis. If any part of an individual's remuneration for these services is a salary, none of the individual's services are excluded, and the total remuneration is included in the contribution computation. *(Department of Workforce Development; 646 IAC 5-5-10; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)*

646 IAC 5-5-11 Agent workforce lessors

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 11. The lessee of a leased workforce is the employer of the individuals in the workforce when the lessor hires and pays the individuals as the agent of the lessee. *(Department of Workforce Development; 646 IAC 5-5-11; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)*

646 IAC 5-5-12 Certain services performed with respect to property not held by the owner

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 12. Where property is held by a mortgagee in possession, an assignee of rent, or a trustee or receiver under the mortgage, the mortgagee, the assignee, or the trustee or receiver, not the owner of the property, is the employer of individuals performing services with respect to the property. *(Department of Workforce Development; 646 IAC 5-5-12; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)*

646 IAC 5-5-13 "Partially exempt services" determined

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4-8-3; IC 22-4.1

Sec. 13. (a) To determine whether one-half (1/2) of the services performed in a pay period constitute employment under IC 22-4-8-3, the department will compare the duration of the services that constitute employment to the duration of the services that do not constitute employment.

(b) For claims that involve multiple pay periods, the department may consider the average of all pay periods to determine whether the services constitute employment.

(c) This rule does not apply with respect to any services performed by the individual for an employing unit:

(1) if the periods for which the employing unit makes payments of remuneration to the individual vary to the extent that there is no period for which a payment of remuneration is ordinarily made to the individual;

(2) if the period for which a payment of remuneration is ordinarily made to the individual by the employing unit exceeds thirty-one (31) consecutive calendar days; or

(3) during a pay period if any of such service is excepted under IC 22-4-8-3.

(d) If, during any period for which an employing unit makes a payment of remuneration to an individual, only a portion of the individual's services constitutes employment and this rule is not applicable, contributions are due with respect to such services that constitute employment. *(Department of Workforce Development; 646 IAC 5-5-13; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)*

Rule 6. Wages

646 IAC 5-6-1 Meals and lodging; valuation

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 1. (a) Costs for meals and lodging allowed by an employer as increased or additional remuneration for employees are wages subject to contribution.

(b) Where the employer provides a fixed amount to employees for meals and lodging, that fixed amount is the amount of additional remuneration.

(c) Where the employer does not provide a fixed amount to employees, the actual cost of the meals and lodging is the amount of additional remuneration.

(d) Where meals and lodging are furnished by the employer on the premises of the employer for the convenience of the employer, the value of those meals and lodging is not remuneration subject to contributions. *(Department of Workforce Development; 646 IAC 5-6-1; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)*

646 IAC 5-6-2 Wages in lieu of notice or termination allowances

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 2. Wages in lieu of notice, or termination allowances, include amounts paid by an employer to an employee at the time of employment separation and are wages subject to contribution. *(Department of Workforce Development; 646 IAC 5-6-2; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)*

646 IAC 5-6-3 Back pay awards by the National Labor Relations Board

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 3. (a) Awards of back pay to individuals by the National Labor Relations Board are reportable as wages for the quarter

covered by the award.

(b) Payments of additional wages made pursuant to terms of the Fair Labor Standards Act are reportable as wages for the quarter covered by the payment.

(c) Awards of back pay to individuals resulting from arbitration are reportable as wages for the quarter covered by the arbitration award. *(Department of Workforce Development; 646 IAC 5-6-3; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)*

646 IAC 5-6-4 Commissions on installment payments

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 4. Where commissions are paid to salespersons each time a purchaser makes a payment under an installment contract, the commissions shall be considered wages paid at the time that they are credited to the salesperson in the employer's financial records. *(Department of Workforce Development; 646 IAC 5-6-4; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)*

646 IAC 5-6-5 Payments to corporate officers, directors, and members of a board of directors

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 5. (a) An officer of a corporation who receives remuneration for his or her services as a corporate officer from a corporation is in employment during the entire term of his or her office, and the remuneration shall be considered as wages.

(b) A member of the board of directors of a corporation is not considered in employment, and fees paid for attendance at meetings of the board of directors shall not be deemed wages.

(c) A member of a board of directors is in employment, however, if he or she performs services for remuneration for the corporation other than those required by attendance at, and participation in, the meetings of the board of directors. *(Department of Workforce Development; 646 IAC 5-6-5; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA; filed Feb 25, 2019, 2:18 p.m.: 20190327-IR-646180408FRA, eff Mar 30, 2019)*

646 IAC 5-6-6 Payments to partners

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 6. Payments made by a partnership to a partner are not wages. A partner is an employer and is not an employee of the partnership. *(Department of Workforce Development; 646 IAC 5-6-6; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)*

646 IAC 5-6-7 Idle time payments

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 7. Where an employer:

(1) guarantees employees a minimum number of hours of employment per week; and

(2) makes payments to them for idle time when they do not render services for the minimum number of hours;

the payment for the idle time constitutes wages subject to contribution. *(Department of Workforce Development; 646 IAC 5-6-7; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)*

646 IAC 5-6-8 Employee discounts on purchases

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 8. Discounts allowed employees on the purchase of goods from the employer are not wages if the:

(1) purchase is optional for the employee; and

(2) discounts do not constitute regular or systematic remuneration for services rendered.

(Department of Workforce Development; 646 IAC 5-6-8; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)

646 IAC 5-6-9 Prizes and bonuses

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 9. (a) A prize or a bonus given by an employer to an employee in cash is wages. When given in any medium other than cash, the prize or bonus will be considered wages unless it is not remuneration for employment.

(b) A prize or bonus paid in cash or in any other medium, whether or not paid as a result of a contractual obligation, shall be reported as wages for the week in which the prize or bonus is due or paid. *(Department of Workforce Development; 646 IAC 5-6-9; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)*

646 IAC 5-6-10 Promissory notes

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 10. Where an employee accepts a promissory note in lieu of wages, the:

(1) face amount of the note at the time it is delivered to and accepted by the employee is considered the amount of wages subject to contribution; and

(2) wages are considered paid at the time of the delivery and the acceptance of the note.

(Department of Workforce Development; 646 IAC 5-6-10; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)

646 IAC 5-6-11 Tips and gratuities

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4-4-2; IC 22-4.1

Sec. 11. (a) Tips and gratuities received by an employee from persons other than the employer, and not accounted for to the employer, are not wages. However, the amount of tips or gratuities accounted for by the employee to the employer by written statement, as required by Section 6053 of the Internal Revenue Code when the tips are in excess of twenty dollars ($20) per month, are wages within the meaning of IC 22-4-4-2.

(b) Where an employer does not permit tipping of employees, but rather:

(1) adds a certain percent to the charges made to patrons; and

(2) disburses the added amounts to employees;

the sums disbursed are wages and not tips. *(Department of Workforce Development; 646 IAC 5-6-11; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)*

646 IAC 5-6-12 Traveling expenses; commission drawing accounts

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 12. (a) Actual amounts advanced or reimbursed to employees for traveling expenses, which are expenses of the employer incurred by the employee in connection with the employee's position and the business of the employer, are not wages.

(b) Where an employee is allowed a drawing account against which earned commissions are credited, and the commissions earned do not equal the amounts withdrawn, and the employee is required to account to the employer for amounts overdrawn, the

commissions earned, and not the amounts overdrawn, are wages subject to contribution. However, if the employee is not required to account to the employer for the amounts overdrawn, all amounts advanced to the employee are wages.

(c) In determining contributions due for a quarter, each employee is to be considered individually, and, if the expenses of an employee exceed earnings, the excess may not be credited against the contribution liability incurred by the employer by reason of wages payable to other employees of that employer.

(d) If an employee earns wages in excess of expenses in one (1) calendar quarter, contributions are due and payable on the wages. If the same employee, in a subsequent calendar quarter, incurs expenses in excess of wages, the excess shall not be taken as a credit against contributions due for a previous calendar quarter, or contributions in future months or calendar quarters, respectively. *(Department of Workforce Development; 646 IAC 5-6-12; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)*

646 IAC 5-6-13 Vacation and leave of absence pay

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 13. Remuneration paid by an employer to an employee for vacation periods or leaves of absence, in the regular course of employment, is wages, and such periods of paid vacation or paid leave of absence is employment, as the employment relationship has not been terminated. *(Department of Workforce Development; 646 IAC 5-6-13; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)*

646 IAC 5-6-14 Taxable wage base; successors

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4-7-2; IC 22-4.1

Sec. 14. (a) When an employing unit qualifies under IC 22-4-7-2(a) or IC 22-4-7-2(b), the remuneration paid by the predecessor in such calendar year is combined with the remuneration paid by the successor in that same calendar year in determining when an employee has reached the taxable wage base limit.

(b) The combining of the remuneration paid to an individual by separate employers, in establishing the taxable wage base limitation, applies only in successorship cases. *(Department of Workforce Development; 646 IAC 5-6-14; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)*

646 IAC 5-6-15 Taxable wage base; out of state

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4-4-2; IC 22-4.1

Sec. 15. Under IC 22-4-4-2, remuneration paid to an employee in another state is considered in determining the taxable wage base limitation for a calendar year, if wages are paid to the same employee by the same employer in this state during that calendar year. *(Department of Workforce Development; 646 IAC 5-6-15; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)*

Rule 7. Unemployment Benefits

646 IAC 5-7-1 Social Security; identification of claimant

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 1. No individual will be eligible for a monetary determination of benefits without first providing the department with his or her Social Security number. *(Department of Workforce Development; 646 IAC 5-7-1; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)*

646 IAC 5-7-2 Separating and base period employer notices; protests

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 2. (a) Whenever an individual files an initial claim for unemployment benefits, the department shall issue notices to the claimant's last employer prior to the filing of the claim, and to all of the claimant's base period employers, informing these employers of the filing of the claim, and requesting the submission of information regarding the claimant's separation from employment. The notices also inform the employers that their experience account is potentially chargeable for benefits paid to the claimant.

(b) If the claimant has been separated for any of the following reasons, the employer shall file a protest setting forth the separation circumstances, and the form of protest, from publicly available department policy, will be set forth on the employer notice:

(1) Voluntarily left the employment without good cause in connection with the work.
(2) Was discharged for just cause.
(3) Was discharged for gross misconduct in connection with his or her work.
(4) Left due to the claimant's physical condition.
(5) Left to accept other employment.
(6) Left to enter self-employment.

(c) An employer shall file a protest when the following circumstances exist with regard to a separated claimant; and the form of protest, from publicly available department policy, will be set forth on the employer notice:

(1) The claimant is entitled to:
    (A) vacation pay;
    (B) payment in lieu of vacation;
    (C) standby pay; or
    (D) wages in lieu of notice.
(2) The claimant is receiving, or will receive, retirement pay.
(3) There are other circumstances, of which the employer is aware, that are potentially disqualifying for claimant benefits.

(d) An employer protest under this section must be filed with the department, as set forth on the notice, within ten (10) days of the date the notice was sent by the department. *(Department of Workforce Development; 646 IAC 5-7-2; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA; filed Feb 25, 2019, 2:18 p.m.: 20190327-IR-646180408FRA, eff Mar 30, 2019)*

646 IAC 5-7-3 Minimum weekly benefits

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 3. (a) In cases where an individual is paid the statutory minimum weekly benefit amount established under IC 22-4-12-2, although the individual's actual weekly benefit amount computes to less than the statutory minimum, the additional benefits paid shall not increase that individual's maximum benefit amount.

(b) If the individual is partially unemployed, the amount of benefits computed and paid to the individual will be the difference between the statutory minimum and the individual's deductible income for a particular week.

(c) In cases where an individual's actual computed weekly benefit amount is less than the statutory minimum, and a penalty suspension has been imposed under IC 22-4-15-1 or IC 22-4-15-2, the statutory weekly benefit amount language, relating to the lifting of the suspension, refers to the individual's actual computed weekly benefit amount, not to the statutory minimum. *(Department of Workforce Development; 646 IAC 5-7-3; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)*

646 IAC 5-7-4 Backdating, cancellation, or withdrawal of claim

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 4. Once a valid claim has been filed by an individual, during the benefit period established that individual cannot cancel,

withdraw, or change the time of filing of the initial claim, a reopened claim, or an additional claim, for any purpose, other than administrative error on the part of department staff. *(Department of Workforce Development; 646 IAC 5-7-4; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)*

Rule 8. Separation from Employment

646 IAC 5-8-1 Partial or part-total unemployment

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 1. (a) A claimant who applies for benefits due to partial or part-total unemployment is ineligible unless they can show that they are working less than their normal customarily scheduled hours for their regular employer.

(b) For purposes of this subsection, "normal customarily scheduled hours" means the hours to which the claimant has agreed to work. Any reduction in hours that regularly occurs as a matter of practice, policy, or procedure of which the claimant was aware and to which the claimant has agreed will not be considered partial or part-total unemployment.

(c) For purposes of this subsection, "regular employer" means an employing unit for which the claimant has performed services in the last twenty-six (26) weeks, except as provided under federal law. *(Department of Workforce Development; 646 IAC 5-8-1; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)*

646 IAC 5-8-2 Leave of absence

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4-15-1; IC 22-4.1

Sec. 2. (a) Where an individual takes a voluntary leave of absence, with the consent of the employer, it shall not constitute voluntarily leaving work without good cause within the meaning of IC 22-4-15-1. However, no benefit or waiting period weeks may be accumulated during that period, unless the individual terminates the leave of absence by notifying the employer and becomes available for work.

(b) A voluntary leave of absence granted to an individual by an employer pursuant to the employer's rule or pursuant to terms of a collective bargaining agreement shall be deemed terminated on the day when the individual again becomes mentally and physically able to work and available for work and establishes the individual's ability to work and availability for work. *(Department of Workforce Development; 646 IAC 5-8-2; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA; filed Feb 25, 2019, 2:18 p.m.: 20190327-IR-646180408FRA, eff Mar 30, 2019)*

646 IAC 5-8-3 Voluntary quit; general

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 3. A claimant will not be considered to have voluntarily left employment for good cause in connection with the work unless it is established that a reasonable individual in the same or similar circumstances would also have left the employment. *(Department of Workforce Development; 646 IAC 5-8-3; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA; filed Feb 25, 2019, 2:18 p.m.: 20190327-IR-646180408FRA, eff Mar 30, 2019)*

646 IAC 5-8-4 Voluntary quit; good cause

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 4. (a) A voluntary quit due to excessive discipline, or inappropriate comments or conduct by managers or coworkers, will not constitute good cause in connection with the work unless it is established that an individual in the same or similar circumstances

would reasonably believe that the:

(1) conduct was severe and pervasive;

(2) conduct:

(A) was motivated by the claimant's:

(i) race;

(ii) age;

(iii) sex;

(iv) national origin; or

(v) religious beliefs;

or other status protected by law;

(B) endangered the claimant's physical safety; or

(C) endangered the claimant's mental health; and

(3) claimant reported the conduct pursuant to the employer's procedures, if any, but no employer action was taken within a reasonable period of time.

(b) An individual who quits employment in anticipation of an imminent discharge does so with good cause if it is established that the:

(1) discharge was imminent; and

(2) imminent discharge would not have been for just cause.

(c) If an employer gives an employee the opportunity to submit a resignation from employment, rather than be discharged, and the employee resigns, this is a quit in lieu of discharge, and the separation will be analyzed under the discharge for just cause criteria, as the employer is the moving party in the separation. *(Department of Workforce Development; 646 IAC 5-8-4; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA; filed Feb 25, 2019, 2:18 p.m.: 20190327-IR-646180408FRA, eff Mar 30, 2019)*

646 IAC 5-8-5 Discharge; work rules

Authority: IC 22-4-18-1; IC 22-4.1-3-3

Affected: IC 22-4; IC 22-4.1

Sec. 5. A work rule will be found to be reasonable if it:

(1) is lawful;

(2) is related to the employer's business operations;

(3) is intended by the employer to broadly apply to classes, categories, or all employees;

(4) does not create a harsh or unconscionable requirement for employees.

(Department of Workforce Development; 646 IAC 5-8-5; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)

646 IAC 5-8-6 Discharge; breach of duty

Authority: IC 22-4-18-1; IC 22-4.1-3-3

Affected: IC 22-4; IC 22-4.1

Sec. 6. (a) In order to qualify as a breach of duty for unemployment insurance purposes, the duty must be:

(1) reasonably connected to the work;

(2) reasonably owed to the employer by the employee; and

(3) of such a nature that a reasonable employee would recognize a violation of the duty, and would understand that such a violation of the duty would subject the individual to discharge.

(b) A breach of duty reasonably owed to an employer includes, but is not limited to, conduct which establishes that the claimant:

(1) damaged the employer's trust and confidence in the claimant's ability to effectively perform the job;

(2) willfully failed to meet the employer's reasonable expectation;

(3) chose a course of action that the claimant knew, or should have known, would negatively impact the employer's financial

interests;

(4) demonstrated an intentional or substantial disregard for the employer's interests;

(5) intentionally or knowingly injured, or attempted to injure, the employer's financial interests;

(6) intentionally chose a course of action that pitted the claimant's interests against the employer's interests to the detriment of the employer;

(7) showed carelessness or negligence to such a degree, or with such recurrence, as to cause damage to the employer's interests; or

(8) performed some volitional act or exercised some control over the circumstances resulting in discharge from employment. *(Department of Workforce Development; 646 IAC 5-8-6; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA; filed Feb 25, 2019, 2:18 p.m.: 20190327-IR-646180408FRA, eff Mar 30, 2019)*

Rule 9. Nonseparation Issues Related to Claims

646 IAC 5-9-1 Registration requirement; failure to register

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4-14-2; IC 22-4.1

Sec. 1. (a) Registration required under IC 22-4-14-2(a)(1) is accomplished through enrollment in the Indiana Career Connect (ICC) Database.

(b) Once a claimant files a claim for unemployment insurance benefits, the department will automatically start an account for the claimant in ICC, based on the information the claimant entered for their Uplink account.

(c) The claimant should then log into ICC, using the login information from the filing of their claim, and complete his or her profile and create a resume. The claimant can also upload an existing resume.

(d) If for some reason a claimant fails to become registered within ten (10) days of filing an initial claim for benefits, the claimant will be denied unemployment insurance benefits. The claimant will not be eligible for benefits until the requirement has been completely met.

(e) If a claimant has a work search waiver, which includes department approved training, a return to work date of sixty (60) days or less, or is an active member of a union hiring hall, the claimant does not have to be registered in ICC, and does not have to report their work search efforts each week. However, they are still required to complete a weekly online voucher. *(Department of Workforce Development; 646 IAC 5-9-1; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)*

646 IAC 5-9-2 Reporting requirements

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 2. (a) A claimant is not eligible for benefits in any week unless the claimant:

(1) has filed a claim for benefits;

(2) reports to the department each week that the claimant continues to meet all eligibility requirements; and

(3) has responded completely to all inquiries from the department.

(b) A claimant's claim for benefits, weekly reports to the department, and responses to all department inquiries must be filed in the form and manner prescribed by the department.

(c) If a claimant does not timely file a claim for benefits, or weekly report, the department shall deny benefits for that week and shall refuse to accept late-filed claims and reports unless the:

(1) department finds that the claimant was unable to file a claim, or weekly report, that week due to administrative error on the part of the department; or

(2) department finds that the claimant personally experienced a verified medical emergency that made it impossible for the claimant to file a timely claim or weekly report.

(Department of Workforce Development; 646 IAC 5-9-2; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted

filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA; filed Feb 25, 2019, 2:18 p.m.: 20190327-IR-646180408FRA, eff Mar 30, 2019)

646 IAC 5-9-3 Effort to secure full-time work *(Voided)*

Sec. 3. *(Voided by PL119-2020, SECTION 3, effective March 18, 2020.)*

646 IAC 5-9-4 Report of job search

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 4. A claimant must report on the claimant's work search on a weekly basis via submission of the online claim form, or in any other manner as required by the department. *(Department of Workforce Development; 646 IAC 5-9-4; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA; filed Feb 25, 2019, 2:18 p.m.: 20190327-IR-646180408FRA, eff Mar 30, 2019)*

646 IAC 5-9-5 Suitable work

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4-15-2; IC 22-4.1

Sec. 5. (a) For purposes of this section, the department will determine whether work is suitable pursuant to the criteria set forth in IC 22-4-15-2.

(b) In order to maintain benefit eligibility, when the department directs, a claimant must apply for any available position.

(c) Suitable work must be accepted, if the offer is received by an individual at any time after their separation from employment.

(d) Failure to accept suitable work, without good cause, will result in the individual being ineligible for benefits. *(Department of Workforce Development; 646 IAC 5-9-5; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)*

Rule 10. Appellate Procedure

646 IAC 5-10-1 Conduct of claims adjudicators

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 1. Claims adjudicators are to observe standards of conduct consistent with their position. These standards include, but are not limited to, the following:

(1) Upholding the integrity of the department.

(2) Complying with statutory confidentiality provisions.

(3) Avoiding impropriety or the appearance of impropriety in all activities.

(4) Performing the duties of their position diligently and impartially.

(Department of Workforce Development; 646 IAC 5-10-1; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA; filed Feb 25, 2019, 2:18 p.m.: 20190327-IR-646180408FRA, eff Mar 30, 2019)

646 IAC 5-10-2 Request for hearing before administrative law judge; notice of hearing

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 2. (a) Any interested party in the claim of an employee shall be entitled to a hearing before an administrative law judge relative to the merits of the claim.

(b) "Interested party" means the following:
(1) The claimant who filed the claim for benefits.
(2) Any employer whose account may be affected by the adjudication of the claim.
(3) Any employer in the claimant's base period.
(4) Any employer:
(A) who has made an offer of work to the claimant; or
(B) to whose employment the claimant has been furnished a referral.
(5) The claimant's last, separating employer prior to the filing of the claim.
(c) A party appealing a determination issued by the department shall file its appeal in the manner prescribed by the department. The appealing party shall include with its appeal a copy of the determination being appealed.
(d) Upon scheduling a hearing on an appeal, a notice of hearing shall be sent to the following:
(1) The claimant at the claimant's last known address of record listed with the department or the claimant self service system uplink account.
(2) Any employer described in subsection (b) involved in the appealed issue.
(3) The department, if it is a party to the appealed issue.
(Department of Workforce Development; 646 IAC 5-10-2; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA; filed Feb 25, 2019, 2:18 p.m.: 20190327-IR-646180408FRA, eff Mar 30, 2019)

646 IAC 5-10-3 Location of administrative hearings
Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 3. All hearings held before an administrative law judge shall be held by telephone, unless otherwise directed by the commissioner, the commissioner's designee, or the administrative law judge having jurisdiction over the case, or as otherwise provided in this article. *(Department of Workforce Development; 646 IAC 5-10-3; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)*

646 IAC 5-10-4 Administrative law judges
Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4-17-15; IC 22-4.1

Sec. 4. (a) All administrative law judges shall be:
(1) admitted to the practice of law in the state of Indiana; and
(2) a member in good standing of the Indiana Bar.
(b) Administrative law judges shall observe standards of conduct consistent with their position. These standards include, but are not limited to, the following:
(1) Upholding the integrity of the department.
(2) Complying with statutory confidentiality provisions.
(3) Avoiding impropriety or the appearance of impropriety in all activities.
(4) Performing the duties of the office diligently and impartially.
(c) Administrative law judges shall abide by and follow IC 22-4-17-15 to ensure the appearance of impartiality. Challenges to the impartiality of an administrative law judge shall be heard and decided by the review board. *(Department of Workforce Development; 646 IAC 5-10-4; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)*

646 IAC 5-10-5 Conduct in hearings before administrative law judges
Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 5. (a) All hearings shall be conducted informally in order to determine the substantial rights of the parties. The parties may present evidence as the administrative law judge deems necessary for determining the substantial rights of the parties. The parties to the appeal may appear for themselves, by attorney, or by duly authorized agent or representative, under section 18 of this rule, and shall have the right to examine their own witnesses, present evidence, and cross-examine witnesses of the opposing party. An administrative law judge:

(1) shall have the right to examine all witnesses;

(2) may require the parties to produce any available evidence that the parties deem necessary for a proper determination of the case; and

(3) where either party fails to appear, or where either party is not represented by an attorney or duly authorized agent, shall have the duty to examine the party's witnesses, and to cross-examine all witnesses of the other party, in order to ensure complete presentation of the case.

In general, the Indiana Rules of Trial Procedure and the Indiana Rules of Evidence shall govern proceedings before an administrative law judge or the review board.

(b) In general, hearsay evidence shall not be considered; however, an administrative law judge shall consider all hearsay evidence as would be admissible under common law or the Indiana Rules of Evidence. Hearsay evidence that is not admissible under a recognized hearsay exception may be admitted, but shall not be entitled to the same evidentiary weight as direct testimony. Hearsay evidence properly objected to, but not falling within a recognized hearsay exception, that is admitted into the record shall not form the sole basis for a decision by an administrative law judge or the review board. *(Department of Workforce Development; 646 IAC 5-10-5; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)*

646 IAC 5-10-6 Continuances; dismissals

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 6. (a) An administrative law judge or the review board may continue any hearing upon its own motion, or upon request by any party to the appeal. The request must be received not later than three (3) days before the date of the hearing, unless the requesting party can demonstrate an unforeseen emergency. The request must set forth good cause for the granting of the request. A copy of the request must be served upon all parties to the hearing. A request for a continuance of a hearing pending before an administrative law judge shall be filed with that administrative law judge. A request for a continuance of a hearing pending before the review board shall be filed with the chairperson of the review board.

(b) Requests for continuances for cases pending longer than sixty (60) days from the filing date of the appeal will not be granted, unless the requesting party can demonstrate an unforeseen emergency.

(c) If the appealing party in a hearing pending before an administrative law judge or the review board fails to appear for a scheduled hearing, after having received due notice, the administrative law judge or the review board shall dismiss the appeal, and the underlying, appealed determination shall be deemed final, unless the appeal is reinstated pursuant to the provisions of this rule.

(d) An administrative law judge, or the review board, may, in their discretion, dismiss any appeal that in their judgment has been abandoned by all interested parties, and the underlying, appealed determination of eligibility, or administrative law judge decision, shall be deemed final, unless the appeal is reinstated pursuant to the provisions of this rule. *(Department of Workforce Development; 646 IAC 5-10-6; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA; filed Feb 25, 2019, 2:18 p.m.: 20190327-IR-646180408FRA, eff Mar 30, 2019)*

646 IAC 5-10-7 Withdrawal of appeal

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 7. (a) A party appealing an initial determination of a deputy, or a party appealing a decision of an administrative law judge, may withdraw the appeal by written request. For an appeal pending before an administrative law judge, the request shall be filed with the presiding administrative law judge. For an appeal pending before the review board, the request shall be filed with the chairperson of the review board. If the request is approved, the underlying determination, or decision, shall become final.

(b) After an appeal has been withdrawn, the appealing party may file a request for reinstatement of the appeal within seven (7) days after the date the notice of withdrawal was sent. For an appeal before an administrative law judge, the request shall be filed with the director of unemployment insurance appeals, or the director's designee. For an appeal pending before the review board, the request shall be filed with the chairperson of the review board, or the chairperson's designee. The request for reinstatement must show good cause for the reinstatement, and will be granted or denied at the discretion of the director of unemployment insurance appeals, or the director's designee, or the chairperson of the review board, or the chairperson's designee, depending upon the level of the appeal. No appeal shall be reinstated more than once after a withdrawal. *(Department of Workforce Development; 646 IAC 5-10-7; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA; filed Feb 25, 2019, 2:18 p.m.: 20190327-IR-646180408FRA, eff Mar 30, 2019)*

646 IAC 5-10-8 Decision of administrative law judge

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 8. The decision of an administrative law judge shall contain conclusions of law that are supported by specific findings of fact. The decision shall be:

(1) in writing;
(2) electronically signed by the administrative law judge; and
(3) sent to:
    (A) the named parties; and
    (B) their designated representatives or attorneys.

(Department of Workforce Development; 646 IAC 5-10-8; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA; filed Feb 25, 2019, 2:18 p.m.: 20190327-IR-646180408FRA, eff Mar 30, 2019)

646 IAC 5-10-9 Request for appeal to the review board

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 9. Within fifteen (15) days after the date an administrative law judge's decision was sent, the adversely affected party may appeal the decision to the review board. The appeal shall be filed pursuant to the instructions set forth on the face of the administrative law judge decision. The review board may, in its discretion:

(1) hold a hearing on the matter appealed; or
(2) review the record from the administrative law judge hearing and issue their decision based upon that review.

(Department of Workforce Development; 646 IAC 5-10-9; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA; filed Feb 25, 2019, 2:18 p.m.: 20190327-IR-646180408FRA, eff Mar 30, 2019)

646 IAC 5-10-10 Conduct of members of the review board

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 10. (a) Review board members are expected to observe standards of conduct consistent with their position. These standards include, but are not limited to, the following:

(1) Upholding the integrity of the department.
(2) Avoiding impropriety or the appearance of impropriety in all activities.
(3) Performing the duties of the office diligently and impartially.

(b) The review board shall convene upon the call of the chairperson, for consultation, and for the disposition of matters pending before the review board. Two (2) members of the review board shall constitute a quorum for the:

(1) transaction of any business; and

(2) performance of any act required or authorized to be transacted or performed by the review board.

(c) The chairperson, when incapacitated and with the consent of the appointing authority, may designate an acting chairperson in the chairperson's absence. *(Department of Workforce Development; 646 IAC 5-10-10; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA; filed Feb 25, 2019, 2:18 p.m.: 20190327-IR-646180408FRA, eff Mar 30, 2019)*

646 IAC 5-10-11 Conduct of hearings before the review board

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 11. (a) Unless otherwise directed by the review board, all hearings before the review board shall be conducted by telephone in the office of the review board in Indianapolis, Indiana.

(b) Each hearing before the review board shall be confined to the evidence submitted before the administrative law judge unless it is an original hearing. Provided, however, the review board may hear or procure additional evidence upon its own motion, or upon written application of either party, and for good cause shown, together with a showing of good reason why the additional evidence was not procured and introduced at the hearing before the administrative law judge.

(c) An application for leave to introduce additional evidence made by either party shall set forth the:

(1) names of the witnesses whose testimony will be offered; and

(2) facts to which they are expected to testify.

If the new evidence is documentary, then a copy of the document proposed to be introduced shall accompany the application. The application, if made by the appellant, must be presented at the time the request for hearing is filed.

(d) No additional evidence shall be admitted except after notice is issued by the review board to all parties to the appeal giving each party an opportunity to rebut the additional evidence. The notice shall:

(1) designate the time and place at which additional evidence will be received;

(2) set forth the names of the witnesses whose testimony will be heard, together with a summary of the facts about which they are expected to testify; and

(3) include a copy of any document offered as additional evidence.

It is further provided, however, that if all parties to an appeal are present at a hearing at which the review board upon its own motion determines to take additional evidence and the parties voluntarily waive their right of notice of the taking of additional evidence, the review board in its own discretion may proceed in the taking of additional evidence.

(e) The review board may remand any proceeding to an administrative law judge for the hearing of additional evidence under the same conditions and after like notice as is provided for the hearing of additional evidence by the review board.

(f) In the hearing of an appeal, the review board may limit the parties to oral argument or the filing of written argument, or both. After notice to all parties, any party to any proceeding in which additional evidence is taken may present material evidence relative to the question upon which the review board has authorized or directed the taking of additional evidence, and evidence in rebuttal also may be introduced.

(g) The review board may order that any claim before an administrative law judge be removed to the review board for consideration. A claim so removed shall be presented, heard, and decided by the review board in the manner prescribed for the hearing of claims before an administrative law judge. *(Department of Workforce Development; 646 IAC 5-10-11; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)*

646 IAC 5-10-12 Decisions of the review board

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 12. (a) The review board shall, as promptly as possible, issue a decision with conclusions of law supported by specific findings of fact. The decision shall be:

(1) in writing; and

(2) electronically signed by the members of the review board who heard the appeal.

(b) If a decision of the review board is not unanimous, the decision of the majority shall control, but the dissenting member

may file an opinion.

(c) Copies of the decision, together with any dissenting opinion, shall be mailed to the parties, and to the parties' designated representatives or attorneys.

(d) A decision of the review board that reverses, in whole or in part, the decision of the administrative law judge shall not incorporate by reference or restatement, in whole, the findings of the administrative law judge, but rather shall contain its own findings and conclusions. *(Department of Workforce Development; 646 IAC 5-10-12; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)*

646 IAC 5-10-13 Witnesses; subpoenas; limitation

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4-17-8; IC 22-4.1

Sec. 13. (a) Whenever the attendance of a witness, or the production of documents or other evidence, is desired by any party to a hearing, the party must request the issuance of a subpoena. The request must be submitted to the administrative law judge in writing or by telephone directed to the clerk of the administrative law judge. If the request is made by telephone, the clerk will:

(1) take the information from the requesting party; and

(2) submit the request to the administrative law judge for consideration.

The request must be made in time for the subpoena to be issued, and served, prior to the time and date of the hearing. The request will be granted or denied at the discretion of the administrative law judge.

(b) A subpoena shall be issued only upon a showing of necessity by the party requesting the subpoena. The request for a subpoena must contain:

(1) the name and address of the individual being subpoenaed; and

(2) a description of the document, record, or object to be produced.

(c) A subpoena, or a denial of a request for a subpoena, shall be served on all interested parties by the clerk of the administrative law judge. Subpoenas shall be enforced in the manner set forth in IC 22-4-17-8. *(Department of Workforce Development; 646 IAC 5-10-13; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA; filed Feb 25, 2019, 2:18 p.m.: 20190327-IR-646180408FRA, eff Mar 30, 2019)*

646 IAC 5-10-14 Depositions

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 14. In all hearings, proof may be made by oral testimony, by documentary exhibits, or by depositions when the convenience of the witnesses or the parties so requires. Depositions shall be taken in the manner set forth in the Indiana Rules of Trial Procedure. *(Department of Workforce Development; 646 IAC 5-10-14; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)*

646 IAC 5-10-15 Translations

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 15. (a) No paper or document written in any foreign language shall be introduced into evidence unless it is accompanied by an accurate English translation, with satisfactory proof, as determined by the administrative law judge or the review board, that the translation is a correct translation of the original.

(b) Testimony in a language other than English, or by the hearing impaired, shall be translated by an interpreter provided by the department, at the department's expense. The interpreter is subject to the interpreter oath or affirmation, which shall be administered by the administrative law judge or the review board. *(Department of Workforce Development; 646 IAC 5-10-15; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA; filed Feb 25, 2019, 2:18 p.m.: 20190327-IR-646180408FRA, eff Mar 30, 2019)*

646 IAC 5-10-16 Recording hearings; transcripts

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 16. All evidence introduced into the record at any hearing before an administrative law judge or the review board shall be preserved. All oral evidence shall be electronically recorded. Hearing recordings shall not be transcribed unless a review board decision is appealed to the Indiana court of appeals, and the transcript becomes a necessary part of the administrative record on appeal. *(Department of Workforce Development; 646 IAC 5-10-16; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)*

646 IAC 5-10-17 Records of decisions

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 17. (a) Copies of all determinations of adjudicators, and of all decisions of administrative law judges and of the review board, shall be electronically stored by the department, consistent with state of Indiana record retention schedules. These decisions shall not be open to public inspection in a manner as to reveal the names or addresses of the interested parties or their witnesses.

(b) Physical case files and audio recordings of hearings shall not be maintained permanently and will be destroyed in accordance with state of Indiana records retention schedules. *(Department of Workforce Development; 646 IAC 5-10-17; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)*

646 IAC 5-10-18 Representation before an administrative law judge or the review board

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 18. (a) Any employer or employing unit interested in any benefit claim pending before an administrative law judge or the review board may appear:

(1) in person, by an officer or other employee of the employer or employing unit as designated by the employer or the employing unit;
(2) by an attorney, as defined in subsection (e);
(3) by an accountant in good standing with the Indiana board of accountancy; or
(4) by a representative of an unemployment compensation service firm.

(b) A claimant for unemployment benefits may appear:

(1) in person;
(2) by an attorney, as defined in subsection (e);
(3) by an accountant in good standing with the Indiana board of accountancy; or
(4) by an authorized agent of a bona fide labor organization to which the claimant belonged at the time the pending claim occurred.

(c) In addition, any interested party may be represented by an individual or member of a class of individuals authorized by rule of the Indiana supreme court to represent parties in judicial or quasi-judicial proceedings.

(d) An administrative law judge, or the review board, in their discretion, may refuse to allow any person to represent a party in any proceeding before the administrative law judge, or the review board, if the administrative law judge, or the review board, finds that this person is or has been guilty of unethical conduct, or has intentionally or repeatedly failed to observe the provisions of IC 22-4, the rules of the department, or other rules or regulations relating to unemployment insurance hearings.

(e) As used in this section, "attorney" refers to one (1) of the following:

(1) An attorney in good standing admitted to the practice of law in Indiana.
(2) An attorney in good standing admitted to the practice of law in another state who has been granted temporary admission to the state bar under Rule 3 of the Rules for Admission to the Bar and the Discipline of Attorneys adopted by the Indiana supreme court.

(f) Fees charged to claimants for representation before an administrative law judge or the review board shall be in a sum subject

to the approval of the review board. Except in unusual cases, this fee shall be for a sum not in excess of fifteen percent (15%) of the unpaid balance of the claimant's maximum benefit amount. *(Department of Workforce Development; 646 IAC 5-10-18; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA; filed Feb 25, 2019, 2:18 p.m.: 20190327-IR-646180408FRA, eff Mar 30, 2019)*

646 IAC 5-10-19 Service of notice; computation of time

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4-17-14; IC 22-4.1

Sec. 19. (a) Notice of all hearings or proceedings before an administrative law judge, or the review board, unless otherwise directed by statute, shall be given by United States mail, with proof of mailing being prima facie evidence of service, or by facsimile or electronic means, addressed to the parties' addresses of record on file with the department.

(b) As used in this section, "notice" includes the sending of notices, determinations, decisions, orders, motions, or the filing of any document with the appellate division or the review board.

(c) If a notice is served through the United States mail, three (3) days must be added to a period that commences upon service of that notice.

(d) A document mailed or electronically transmitted to a party is presumed to be received if the document was mailed or electronically transmitted to the complete, correct address of record unless:

(1) there is tangible evidence of nondelivery, such as the document being returned to the department by the United States Postal Service; or

(2) credible and persuasive evidence is submitted to the department to establish nondelivery, delayed delivery, or misdelivery of the document.

(e) The filing of a document with the appellate division, or the review board, is complete on the earliest of the following dates that apply to the filing:

(1) The date on which the document is delivered in person to the appellate division or the review board by an interested party or by the party's authorized representative.

(2) The date of the postmark on the envelope containing the document, if the document is mailed to the appellate division or the review board through the United States Postal Service.

(3) The date on which the document is deposited with a private carrier, as shown by a receipt issued by the carrier, if the document is sent to the appellate division or the review board by a private carrier.

(4) The date of receipt by the appellate division or the review board, if the document is submitted by facsimile or in another electronic form approved by the department.

(f) When computing any period of time prescribed or allowed by this article, by order of an administrative law judge or the review board, or by any applicable statute, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed is to be included, unless it is:

(1) a Saturday;

(2) a Sunday;

(3) a legal holiday as defined by state statute; or

(4) a day that the department is closed during regular business hours.

If the last day of the response period falls on a day described in subdivisions (1) through (4), then the period runs until the end of the next regular business day of the department.

(g) Responses filed outside of a time period computed pursuant to this section will be considered to be untimely. *(Department of Workforce Development; 646 IAC 5-10-19; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA; filed Feb 25, 2019, 2:18 p.m.: 20190327-IR-646180408FRA, eff Mar 30, 2019)*

646 IAC 5-10-20 Pleadings; forms

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 20. Unless otherwise provided in this rule, all forms, pleadings, and papers in connection with appeals shall be filed with

the presiding administrative law judge or the chairperson of the review board depending upon the level of appeal. All legal motions filed by attorneys or representatives shall be served on all parties to the appeal, with an included certificate of service. *(Department of Workforce Development; 646 IAC 5-10-20; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA; filed Feb 25, 2019, 2:18 p.m.: 20190327-IR-646180408FRA, eff Mar 30, 2019)*

646 IAC 5-10-21 Change of administrative law judge

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4-17-5; IC 22-4.1

Sec. 21. Upon written application to the director of unemployment insurance appeals, a party to a hearing before an administrative law judge may request a change of the assigned judge. The requesting party must establish good cause for the change, and the decision to change is at the discretion of the director of unemployment insurance appeals. A party is entitled to only one (1) change of judge. *(Department of Workforce Development; 646 IAC 5-10-21; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)*

646 IAC 5-10-22 Transfer of hearing to unemployment insurance board *(Repealed)*

Sec. 22. *(Repealed by Department of Workforce Development; filed Feb 25, 2019, 2:18 p.m.: 20190327-IR-646180408FRA, eff Mar 30, 2019)*

646 IAC 5-10-23 Deceased claimant

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4-12-1; IC 22-4-17-2; IC 22-4.1

Sec. 23. (a) Under IC 22-4-12-1, unemployment insurance benefits due and payable to a deceased applicant shall be paid to the executor, administrator, or next-of-kin of the deceased if, prior to their death, the decedent had executed a voucher for the benefits claimed.

(b) If there is an executor or administrator, payments must be made to the executor or administrator. If it is shown to the satisfaction of the department that there is no executor, and no administrator has been appointed, and in all probability no administrator will be appointed, payment may be made to the next-of-kin, with due regard being given to the following order of preference:

(1) The surviving spouse.
(2) Children.
(3) Parents.
(4) Brothers and sisters.
(5) Other relatives.

However, the department is not bound to follow this order of preference.

(c) Whenever there is more than one (1) legal heir in any of the classes established in subsection (b), payment may be made to any one (1) of that group as agent for the others upon submission of proper evidence of authority and identification.

(d) Application for payment of such benefits must be made in writing and on the prescribed form within six (6) months after the death of the decedent provided that the department, upon good cause shown, may extend the time for filing.

(e) Under IC 22-4-17-2, in cases where the claimant's benefit eligibility, or disqualification, is disputed, the department shall promptly notify the claimant and the employer, or employers, directly involved with the issue or issues raised, and the determination will set forth the appeal rights of the party receiving the adverse determination. In the event of the death of the claimant between the:

(1) filing of a valid claim for benefits; and
(2) issuance of an eligibility determination by the department;

all notices filed or issued under this rule shall be served upon the authorized representative of the deceased claimant, as determined under subsection (b).

(f) In the event a hearing is scheduled in an appeal involving a deceased claimant, the claimant's authorized representative of the estate shall be allowed to participate in the hearing in place of the claimant, and the appeal shall proceed as set forth under this

rule. *(Department of Workforce Development; 646 IAC 5-10-23; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)*

646 IAC 5-10-24 Telephone hearings

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 24. (a) Except as otherwise provided in this section, all hearings scheduled before an administrative law judge, or the review board, shall be set as telephone hearings, in which all parties to the appeal shall participate by telephone.

(b) Once an administrative law judge hearing is scheduled by telephone, a party to the appeal has the right to:

(1) object to telephone participation; and

(2) be allowed to participate in the hearing in person.

Such an objection must be filed with the administrative law judge assigned to the case not later than three (3) days prior to the scheduled hearing date. A revised notice of hearing will then be sent to the parties, changing the type of hearing for the requesting party to an in-person hearing at the hearing site closest to where the employment services were performed. Whether the nonrequesting party will also be required to participate in person shall be at the discretion of the administrative law judge assigned to the case.

(c) An administrative law judge, or the review board, may, at their discretion, schedule and conduct an in-person hearing under this rule.

(d) When a hearing before an administrative law judge, or the review board, is scheduled by telephone, either with one (1) or both parties participating by telephone, the parties shall:

(1) exchange any exhibits to be introduced into the record at the hearing; and

(2) provide a copy of those exhibits in the form and manner prescribed by the department to the administrative law judge, or to the review board, no later than three (3) days prior to the scheduled hearing date.

For exhibits mailed using certified mail or a private carrier, a copy of the certified mail mailing label or a copy of the label from a private carrier shall serve as proof of mailing.

(e) If, at the time of the scheduled hearing, all participants have not received copies of any exhibits, if the presenting party can establish proof that the party provided a copy of the exhibits in the form and manner prescribed by the department, the administrative law judge, or the review board, has the discretion of continuing the hearing in order to allow all participants to obtain copies of all exhibits, or of attempting to have any missing exhibits read into the record, while affording the opposing party the opportunity to object to the admission of the exhibits. If the presenting party cannot establish proof that the party provided a copy of the exhibits in the form and manner prescribed by the department, then the hearing will proceed as scheduled, without the consideration of the missing exhibits.

(f) A party to a telephonic hearing before an administrative law judge, or the review board, shall submit one (1) contact telephone number for the hearing. If a party has a representative, or has witnesses, that party shall arrange for that party's representative, or witnesses, to be at that party's location, or shall arrange for the conferencing of the additional individuals into the hearing. Absent prior approval for calling additional numbers per party, an administrative law judge, or the review board, will call only one (1) contact telephone number per party. *(Department of Workforce Development; 646 IAC 5-10-24; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA; filed Feb 25, 2019, 2:18 p.m.: 20190327-IR-646180408FRA, eff Mar 30, 2019)*

646 IAC 5-10-25 Proceedings before the liability administrative law judge

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4-32-4; IC 22-4.1

Sec. 25. (a) Any protest filed by an employer under IC 22-4-32-4 must contain the cause or grounds for the protest, and the particular fact or facts relied upon to support the protest. The protesting employer may file either on the form provided by the department for that purpose or on any other document that shows an intent to protest the department's determination. The employer:

(1) must sign the protest; and

(2) shall file the protest with the commissioner.

(b) After the protest is received by the commissioner, the commissioner, or the commissioner's designee, shall refer the protest

to the liability administrative law judge, who will set the date, time, and place for the hearing. The hearing will be scheduled to be held no fewer than ten (10) days following the date the notice of hearing was sent.

(c) By permission of the liability administrative law judge, the employer may amend its protest at any time prior to the beginning of the hearing. The hearing will be confined to the issues raised by the employer's protest.

(d) Unless the employer's protest is filed within the statutory time period, the department's liability determination shall be considered to be correct and final.

(e) The liability administrative law judge shall have no jurisdiction to determine the benefit rights of any individual to whom benefits have been paid as the result of a final determination. *(Department of Workforce Development; 646 IAC 5-10-25; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA; filed Feb 25, 2019, 2:18 p.m.: 20190327-IR-646180408FRA, eff Mar 30, 2019)*

Rule 11. Administration of Interstate Benefits

646 IAC 5-11-1 Interstate benefit payment plan

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 1. This rule governs the state of Indiana in its administrative cooperation with other states adopting a similar regulation for the payment of benefits to interstate claimants. *(Department of Workforce Development; 646 IAC 5-11-1; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)*

646 IAC 5-11-2 Definitions

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 2. (a) The definitions in this section apply throughout this rule.

(b) "Agent state" means any state in which an individual files a claim for benefits from another state.

(c) "Benefits" means the compensation payable to an individual, with respect to his or her unemployment, under the unemployment insurance law of any state.

(d) "Interstate benefit payment plan" means the plan approved by the interstate conference of employment security agencies under which benefits shall be payable to unemployed individuals absent from the state in which benefit credits have been accumulated.

(e) "Interstate claimant" means an individual who claims benefits under the unemployment insurance law of one (1) or more liable states through the facilities of an agent state. The term shall not include any individual who customarily commutes from a residence in an agent state to work in a liable state unless the department finds that this exclusion would create undue hardship on such claimants in specified areas.

(f) "Liable state" means any state against which an individual files, through another state, a claim for benefits.

(g) "Week of unemployment" includes any week of unemployment as defined in the law of the liable state from which benefits with respect to such week are claimed. *(Department of Workforce Development; 646 IAC 5-11-2; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)*

646 IAC 5-11-3 Registration for work

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 3. (a) Each interstate claimant shall be registered for work through any public employment office in the agent state when and as required by the law, regulations, rules, and procedures of the agent state. The registration shall be accepted as meeting the registration requirements of the liable state.

(b) Each agent state shall duly report to the liable state in question whether each interstate claimant meets the registration requirements of the agent state. *(Department of Workforce Development; 646 IAC 5-11-3; filed Apr 26, 2011, 11:23 a.m.: 20110525-*

IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)

646 IAC 5-11-4 Benefit rights of interstate claimants

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 4. (a) If a claimant files a claim against any state, and it is determined by the state that the claimant has available benefit credits in such state, then claims shall be filed only against the state as long as benefit credits are available in that state. Thereafter, the claimant may file claims against any other state in which there are available benefit credits.

(b) Under this rule, benefit credits shall be deemed to be unavailable whenever benefits:

(1) have been exhausted, terminated, or postponed for an indefinite period or for the entire period in which benefits would otherwise be payable; or

(2) are affected by the application of a seasonal restriction.

(Department of Workforce Development; 646 IAC 5-11-4; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)

646 IAC 5-11-5 Claims for benefits

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 5. (a) Claims for benefits or waiting period shall be filed:

(1) by interstate claimants on uniform interstate claim forms and in accordance with the uniform procedures developed pursuant to the interstate benefit payment plan; and

(2) in accordance with the type of week in use in the agent state.

Any adjustments required to fit the type of week used by the liable state shall be made by the liable state on the basis of consecutive claims filed.

(b) Claims shall be filed in accordance with agent state rules or regulations for intrastate claims in local employment offices, at an itinerant point, by mail, or by electronic transmission.

(c) With respect to claims for weeks of unemployment in which an individual was not working for the individual's regular employer, the liable state shall, under circumstances that it considers good cause, accept a continued claim filed up to one (1) week, or one (1) reporting period, late. If a claimant files more than one (1) reporting period late, an initial claim must be used to begin a claim series, and no continued claim for a past period shall be accepted.

(d) With respect to weeks of unemployment during which an individual is attached to the individual's regular employer, the liable state shall accept any claim that is filed within the time limit applicable to such claims under the law of the agent state. *(Department of Workforce Development; 646 IAC 5-11-5; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA; filed Feb 25, 2019, 2:18 p.m.: 20190327-IR-646180408FRA, eff Mar 30, 2019)*

646 IAC 5-11-6 Claims for benefits

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 6. (a) The agent state shall, in connection with each claim filed by an interstate claimant, ascertain and report to the liable state in question such facts relating to the claimant's availability for work and eligibility for benefits as are readily determinable in and by the agent state.

(b) The agent state's responsibility and authority in connection with the determination of interstate claims shall be limited to investigation and reporting of relevant facts. The agent state shall not refuse to take an interstate claim. *(Department of Workforce Development; 646 IAC 5-11-6; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)*

646 IAC 5-11-7 Appellate procedure

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 7. (a) Appeals shall be conducted in accordance with the interstate agreement.

(b) With respect to the time limits imposed by the law of a liable state upon the filing of an appeal in connection with a disputed benefit claim, an appeal made by an interstate claimant shall be deemed to have been made and communicated to the liable state on the date when the appeal is received by any qualified officer of the agent state. *(Department of Workforce Development; 646 IAC 5-11-7; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)*

646 IAC 5-11-8 Extension of interstate benefit payments to include claims taken in and for Canada

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 8. This rule shall apply in all its provisions to claims taken in and for Canada. *(Department of Workforce Development; 646 IAC 5-11-8; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)*

Rule 12. Reciprocal Agreements

646 IAC 5-12-1 Reciprocal coverage of multistate workers

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4-22-1; IC 22-4-22-2; IC 22-4.1

Sec. 1. This rule governs the department in its administrative cooperation with other states subscribing to the interstate reciprocal coverage arrangement, hereinafter referred to as the arrangement. *(Department of Workforce Development; 646 IAC 5-12-1; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)*

646 IAC 5-12-2 Definitions

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 2. (a) The definitions in this section apply throughout this rule.

(b) "Agency" means any officer, board, commission, or other authority charged with the administration of the unemployment compensation law of a participating jurisdiction.

(c) "Customarily performed services by an individual in more than one (1) jurisdiction" means services performed in more than one (1) jurisdiction during a reasonable period, if the nature of the services gives reasonable assurance that they will continue to be performed in more than one (1) jurisdiction or if the services are required or expected to be performed in more than one (1) jurisdiction under the election.

(d) "Interested agency" means the agency of jurisdiction.

(e) "Interested jurisdiction" means any participating jurisdiction to which an election submitted under this rule is sent for its approval.

(f) "Jurisdiction" means any state of the United States, the District of Columbia, Canada, or, with respect to the federal government, the coverage of any federal unemployment compensation law.

(g) "Participating jurisdiction" means a jurisdiction whose:

(1) administrative agency has subscribed to the arrangement; and

(2) adherence thereto has not terminated.

(Department of Workforce Development; 646 IAC 5-12-2; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted

filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)

646 IAC 5-12-3 Reciprocal coverage election approval

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 3. The commissioner of the department has the authority to approve or disapprove reciprocal coverage elections in accordance with this rule. *(Department of Workforce Development; 646 IAC 5-12-3; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA; filed Feb 25, 2019, 2:18 p.m.: 20190327-IR-646180408FRA, eff Mar 30, 2019)*

646 IAC 5-12-4 Location of services in question

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4-8-1; IC 22-4-22; IC 22-4.1

Sec. 4. (a) In accordance with reciprocal agreements entered under IC 22-4-22-1 through IC 22-4-22-4, coverage and allocation to certain states of services and wages paid for such services, performed both in Indiana and one (1) or more other states, shall be deemed employment and wages in the state as provided in those agreements so long as they remain in force.

(b) If services are performed both in Indiana and in one (1) or more other states with which no reciprocal agreement exists relating to the allocation of services and wages, and the services are not localized in any state, then contributions will be required on wages for services performed in Indiana, if:

(1) those services constitute employment within the meaning of IC 22-4-8-1; and

(2) contributions are not required and paid in another state.

(Department of Workforce Development; 646 IAC 5-12-4; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)

646 IAC 5-12-5 Submission and approval of coverage elections under the interstate reciprocal coverage arrangement

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 5. (a) Any employing unit may file an election to cover under the law of a single participating jurisdiction all of the services performed for him or her by an individual who customarily works for him or her in more than one (1) participating jurisdiction. An election may be filed, with respect to an individual, with any participating jurisdiction in which:

(1) any part of the individual's services are performed;

(2) the individual has his or her residence; or

(3) the employing unit maintains a place of business to which the individual's services bear a reasonable relation.

(b) The agency of the elected jurisdiction shall initially approve or disapprove the election. If the agency approves the election, it shall forward a copy to the agency of each other participating jurisdiction specified, under whose unemployment compensation law the individual or individuals in question might, in the absence of the elections, be covered. Each interested agency shall:

(1) approve or disapprove the election, as promptly as practicable; and

(2) notify the agency of the elected jurisdiction accordingly.

(c) In case its law so requires, any interested agency may, before taking action, require from the electing employing unit satisfactory evidence that the affected employees have been notified of, and have acquiesced in, the election.

(d) If the agency of the elected jurisdiction, or the agency of any interested jurisdiction, disapproves the election, the disapproving agency shall notify the elected jurisdiction and the electing employing unit of its action and of its reasons.

(e) An election shall take effect as to the elected jurisdiction only if approved by its agency and by one (1) or more interested agencies. An election thus approved shall take effect, as to any interested agency, only if it is approved by the agency.

(f) In case any election is approved only in part, or is disapproved by some of the agencies, the electing employing unit may withdraw its election within ten (10) days after being notified of this action. *(Department of Workforce Development; 646 IAC 5-12-5; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-*

646170447RFA)

646 IAC 5-12-6 Effective period of elections

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 6. (a) An election duly approved under this rule shall become effective at the beginning of the calendar quarter in which the election was submitted unless the election, as approved, specifies the beginning of a different calendar quarter. If the electing unit requests an earlier effective date than the beginning of the calendar quarter in which the election is submitted, the earlier date may be approved solely as to those interested jurisdictions in which the employer had no liability to pay contributions for the earlier period in question.

(b) The application of an election to any individual under this rule shall terminate if the agency of the elected jurisdiction finds that the nature of the services customarily performed by the individual for the electing unit has changed, so that they are no longer customarily performed in more than one (1) participating jurisdiction. Such termination shall be effective at the close of the calendar quarter in which notice of the finding is sent to all parties affected.

(c) Except as provided in subsection (b), each election approved shall remain in effect through the close of the calendar year in which it is submitted until the close of the calendar quarter in which the electing unit gives written notice of its termination to all affected agencies.

(d) Whenever an election under this rule ceases to apply to any individual under subsection (b) or (c), the electing unit shall notify the affected individual accordingly. *(Department of Workforce Development; 646 IAC 5-12-6; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA; filed Feb 25, 2019, 2:18 p.m.: 20190327-IR-646180408FRA, eff Mar 30, 2019)*

646 IAC 5-12-7 Reports and notices by the electing unit

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4; IC 22-4.1

Sec. 7. (a) The electing unit shall:

(1) promptly notify each individual affected by its approved election; and

(2) furnish the elected agency a copy of the notice.

(b) Whenever an individual covered by an election under this rule is separated from employment, the electing unit shall notify the individual as to the jurisdiction under whose unemployment compensation law the services have been covered. If, at the time of termination, the individual is not located in the elected jurisdiction, the electing unit shall notify the individual as to the procedure for filing interstate benefit claims.

(c) The electing unit shall immediately report to the elected jurisdiction any change that occurs in the conditions of employment pertinent to its election, such as cases where:

(1) an individual's services for the employer cease to be customarily performed in more than one (1) participating jurisdiction; or

(2) a change in the work assigned to an individual requires him or her to perform services in a new participating jurisdiction. *(Department of Workforce Development; 646 IAC 5-12-7; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)*

Rule 13. Regulation of Deadly Weapons and Devices

646 IAC 5-13-1 Policy statement

Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4-8-1; IC 22-4.1

Sec. 1. (a) It is the policy of the state to protect the public peace, health, and safety and to preserve the lives and property of the people working or having business in department offices, and to assure the continuity of department operations. The department

shall act to maintain security, enforce rules relating to security, and preserve the peace in and around department offices.

(b) Unless otherwise set forth in this rule or other applicable statute, this rule applies to all:

(1) visitors;

(2) invitees;

(3) state employees;

(4) contractors; and

(5) agents.

(c) This rule is in conjunction with 25 IAC 8, a rule of the Indiana department of administration and 240 IAC 9, a rule of the state police department. *(Department of Workforce Development; 646 IAC 5-13-1; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)*

646 IAC 5-13-2 Definitions

Authority: IC 22-4-18-1; IC 22-4.1-3-3

Affected: IC 22-4-8-1; IC 22-4.1; IC 35-47; IC 35-47.5-2-4

Sec. 2. The following definitions apply throughout this rule:

(1) Except as provided in clause (D), "deadly weapon" means any of the following:

(A) A loaded or unloaded firearm (as defined in IC 35-47-1-5).

(B) A destructive device, weapon, device, taser (as defined in IC 35-47-8-3), electronic stun weapon (as defined in IC 35-47-8-1), or stun gun (as defined in IC 35-47-8-2), equipment, including knives, chemical substance, or other material, that, in the manner it is used, or could ordinarily be used, or is intended to be used, is readily capable of causing serious bodily injury.

(C) A biological disease, virus, or organism that is capable of causing serious bodily injury.

(D) The term does not include:

(i) a taser (as defined in IC 35-47-8-3);

(ii) an electronic stun weapon (as defined in IC 35-47-8-1);

(iii) a chemical designed to temporarily incapacitate a person; or

(iv) another device designed to temporarily incapacitate a person;

if the device described in items (i) through (iv) is used by a law enforcement officer who has been trained in the use of the device and who uses the device in accordance with the law enforcement officer's training and while lawfully engaged in the execution of official duties.

(2) "Destructive device" has the meaning set forth in IC 35-47.5-2-4.

(3) "Person" means the following:

(A) Visitors.

(B) Invitees.

(C) State employees.

(D) Contractors.

(E) Agents.

(4) "Possession" means on or about a person's body or clothing, or in any:

(A) purse;

(B) backpack;

(C) cooler;

(D) sack;

(E) carrier; or

(F) other container;

carried by the person or under that person's direct and immediate control.

(5) "Terrorism" means the unlawful use of force or violence or the unlawful threat of force or violence to intimidate or coerce a government or all or part of the civilian population (as defined in IC 35-41-1-26.5 *[IC 35-41-1-26.5 was repealed by P.L.114-2012, SECTION 132, effective July 1, 2012.]*).

(6) "Weapon of mass destruction" has the meaning set forth in IC 35-41-1-29.4 *[IC 35-41-1-29.4 was repealed by P.L.114-*

2012, SECTION 136, effective July 1, 2012.].
(Department of Workforce Development; 646 IAC 5-13-2; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)

646 IAC 5-13-3 Weapons and devices prohibited
Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4-8-1; IC 22-4.1

Sec. 3. No person in possession of a deadly weapon, destructive device, weapon of mass destruction, or any other device commonly used in furtherance of terrorism, or that is readily capable of causing serious bodily injury (as defined by IC 35-41-1-25 *[IC 35-41-1-25 was repealed by P.L.114-2012, SECTION 129, effective July 1, 2012.]*) as determined by an authorized law enforcement officer shall be permitted into or permitted to remain in a department office. *(Department of Workforce Development; 646 IAC 5-13-3; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)*

646 IAC 5-13-4 Authorized persons
Authority: IC 22-4-18-1; IC 22-4.1-3-3
Affected: IC 22-4-8-1; IC 22-4.1; IC 35-47-2-2; IC 35-47-2-4

Sec. 4. This rule does not apply to the following persons, otherwise authorized by law to carry firearms, who enter a department office in an official capacity and not as private citizens:

(1) A federal, state, or local law enforcement officer or a person who has been employed or authorized by the state to provide security protection and services.
(2) Members of the Indiana general assembly who hold an unlimited license to carry a handgun (see IC 35-47-2-4).
(3) Members of the Indiana judiciary (see IC 35-47-2-2(4)).

(Department of Workforce Development; 646 IAC 5-13-4; filed Apr 26, 2011, 11:23 a.m.: 20110525-IR-646100464FRA; readopted filed Nov 27, 2017, 3:22 p.m.: 20171227-IR-646170447RFA)

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